

NOTICE OF APPEAL
STATEMENT OF REASONS
RELIEF REQUESTED
DATED July 23, 2014
TO: USDA Forest Service, Regional Forester
FROM: Larry McLaud

DECISION APPEALED: The decision appealed is the Record of Decision to approve alternative G in the final Environmental impact Statement for the Gila National Forest Travel Plan. This notice of appeal is filed pursuant to the requirements of 36 CFR 215.

NOTICE OF APPEAL
Notice is hereby given pursuant to 36 CFR. 215 et seq. that Larry McLaud appeals Gila National Forest Travel Plan decision to the Regional Forester. The Appellant believes that the Forest Supervisor's decision is in error and not in accordance with the legal requirements of the Gila Forest Plan. The actions approved in the Record of Decision (ROD) would directly and significantly affect the appellant.

Larry McLaud uses the Gila National Forest (GNF), including the area for non-motorized recreation, wildlife viewing, photography, solitude, fishing and spiritual renewal. He first visited the GNF in 1983 and has often returned to enjoy the natural resources within the GNF.

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STATEMENTS OF REASONS

1. FEIS has failed to explain how it decided on the minimum road miles for the GNF. This is arbitrary and capricious. The GNF described a process on how it decided what roads were excluded for public use but did not have a procedure for including roads to remain open to the public. The GNF also did not explain why 3,000 miles of roads are needed for management of the Forest. Also the GNF was inconsistent in applying the stated procedure for closing roads. For example road 149 along Meadow Creek is to remain open even though the road crosses the stream several times and follows along in the riparian zone for a least 1 mile. Meadow Creek is a perennial stream with wild trout. Road 500 along Turkey Run is in the riparian zone and crosses the stream at least 50 times over 3 miles.

The travel management plan fails to minimize the effects of off-road vehicles to National Forest System Lands as required by 36 CFR § 212.55 and Executive Order 11644, as amended by Executive Order 11989.

The development and maintenance of a transportation system and balancing Forest resources, Forest management activities, and public needs and wants is challenging and controversial. To identify the road system to manage, 36 CFR 212.5 (b) states

“...the responsible official must identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands. In determining the minimum road system, the responsible official must incorporate a science-based roads analysis at the appropriate scale and, to the degree practicable, involve a broad spectrum of interested and affected citizens, other state and federal agencies, and tribal governments. The minimum system is the road system determined to be needed to meet resource and other management objectives adopted in the relevant land and resource management plan (36 CFR part 219), to meet applicable statutory and regulatory requirements, to reflect long-term funding expectations, to ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.

The Executive Order's minimization criteria must be applied to designation of all motorized trails and areas. The FEIS for this project failed to address how both the ORV Executive Orders and the Travel Management Rule minimization criteria were applied. The Forest Service cannot simply focus on how impacts from motorized uses are going to be reduced or mitigated by the elimination of cross-country motorized travel or future maintenance of certain motorized routes. A supposed reduction in impacts does not equate with a minimization of impacts. As the courts in both Idaho Conservation League and Center for Biological Diversity explained, "[m]inimize' as used in the regulation does not refer to the number of routes, nor their overall mileage. It refers to the effects of route designations, i.e. the [Forest Service] is required to place routes specifically to minimize 'damage' to public resources, 'harassment' and 'disruption' of wildlife and its habitat, and minimize 'conflicts' of uses." ICL v. Guzman at *16 (quoting Ctr. for Biological Diversity v. U.S. Dept. of Interior, --- F.Supp.2d ----, 2009 WL 7036134, at *20 (Sept. 28, 2009)). Simply put, the position in the GNF ROD is that motorized routes must be provided in sensitive wildlife habitat (usually roadless areas). While there may theoretically be a reduction in impacts on some trails from this ROD, it is not a minimization of impacts. There are hundreds of miles of roads and trails not in sensitive wildlife habitat. Minimizing impacts would mean allocating the sensitive areas to non-motorized use and allowing motors in less sensitive areas. That is not what this ROD does, however. The Final EIS and ROD fail to allow the public to determine how the Forest Service actually applied the minimization criteria to all trails and areas designated for motorized uses. Instead, the ROD merely claims it minimized impacts. The minimum road system analysis is not complete as directed by the Travel Management Regulations (page 39 of ROD). Ecology Center v. Austin, 9th Circuit. Dec 8, 2005 states, "Just as it would be arbitrary and capricious for a pharmaceutical company to market a drug to the general population without first conducting a clinical trial to verify that the drug is safe and effective, it is arbitrary and capricious for the Forest Service to irreversibly "treat" more and more old growth forest without first determining that such treatment is safe and effective for dependent species. The EIS discusses in detail only the Service's own reasons for proposing treatment, and it treats the prediction that treatment will benefit old growth dependent species as a fact instead of an untested and

debated hypothesis.” The GNF has identified the minimum road system needed in TAP but has not presented how that determination was made, therefore it is arbitrary and capricious. Leaving roads open to motorized use and not maintaining these roads can cause safety problems and increased natural and cultural resource damage.

2. The ROD and FEIS Fail to Meet Requirements in the GNF Land and Resource Management Plan (Forest Plan)

A Forest Plan goal states, “Protect and improve soil resources.” Selecting alternative G violates this goal; it does not protect and improve soil resources. Forest Service roads have been well documented as major sources of accelerated erosion and sediment (Reid and Dunne 1984) “road closures would be beneficial to water quality if the roads were properly decommissioned and well maintained after closure.” “roads... may have a long-term adverse effect on water quality if they are not properly maintained.” Effects of poorly maintained roads are addressed in the FEIS.

The cost of road maintenance has increased dramatically recently. Funding for road maintenance for the GNF has basically stayed the same in recent years. With inflation of road maintenance costs and deflation of funding, it becomes clear the GNF will have to make some tough choices in regards to road and trail management. Without proper annual maintenance roads will degrade causing adverse effects on resources. Open roads not maintained will have dramatic adverse effects on the resources of the GNF. The decision to close more roads or find alternative funding will have to be made. It is highly unlikely in the near term that increased alternative funding will close the road maintenance spending gap. The GNF has about \$1,000,000 for annual road maintenance while the present cost of yearly road maintenance is over \$4,000,000. This annual deficit of road maintenance will cause repeated resource damage and increased concerns of safety issues in violation of the Forest Plan. The GNF is setting itself up for failure by selecting alternative G that it cannot properly manage or maintain.

The FEIS notes there are several fords on fish and non-fish bearing streams in the alternative G approved in the ROD. There is no record of any actual

measurements of fish habitat conditions or the actual monitoring of fish presence or actual fish spawning. Allowing fords across fish bearing stream creates degraded habitat for a variety of fish species.

The Forest Plan states:

Give preferential consideration to resources dependent on riparian areas over other resources. Other resource uses and activities may occur to the extent that they support or do not adversely affect riparian-dependent species.	Plan Amendment No. 10 – September 2005 Page 30
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Alternative G has not followed this part of the Forest Plan as some open roads will adversely affect riparian-dependent species.

Furthermore, the FEIS notes a site-specific analysis was not done for every road, trail and road crossing, and stream crossing. This decision puts all risk on aquatic resources for a discretionary choice of allowing motorized recreational activities that can be conducted in less sensitive areas of the GNF.

The expected road maintenance budget will not provide enough maintenance for the number of miles of open roads. Allowing roads to be open but not properly maintained will cause increased soil erosion, poorer water quality and degraded wildlife habitat. The deferred road maintenance will continue to grow and has created an unsustainable situation. “The mission of the GNF is to provide multiple use and sustained yield of goods and services in a way that maximizes long-term net public benefits consistent with resource integration, environmental quality, and management considerations.” (Gila Forest Plan). Furthermore, the GNF has a significant annual road maintenance backlog. Given funding constraints, it is unlikely that there will be enough money to adequately maintain the system. In terms of roads, the selected alternative G is unsustainable, violates the Forest Plan and will cause additional resource degradation if roads are not properly maintained.

3. The FEIS choose alternative G based on a reason not directed by the TMR. Alternative G “provides a balanced effort to protect resources and provide for public access and continued Forest management.” (page 4 of ROD). All the alternatives presented provide for the same public access, only motorized access is different under each alternative. Motorized access contributes to resource degradation to varying degrees according to each alternative. No explanation is given as to how this decision was arrived at. It is therefore arbitrary and capricious. CFR 212.55 subpart b of the TMR directs the forest have the “objective of reducing and minimizing adverse impacts from motor vehicle use on natural and cultural resources.” It says nothing about balance of uses. Alternative E, the environmentally preferable alternative for the short and long term, was not selected. This is a violation of the TMR.

Criteria in Section 212.55 of the Rule to be used for evaluation:

Impacts to resources

public safety

need for maintenance of roads and trails

conflicts among uses

ease of enforcement

avoid unintended and undesirable consequences

Nowhere on this list of criteria is to balance use of a special interest (local motorized users) with impacts to resources. Less than 1 percent of the public use motorized vehicles on the GNF. Close to 99 percent of the public want to protect resources on the GNF. A question of “balance” is hard to understand or define but favoring less than 1 percent of the public over 99 percent of the public is not my definition of balance.

4. Segments of illegal, user-built trails are included. By allowing this trail to be used as a designated route will encourage these motorized users to continue creating more illegal trails in the future. These trails have had no NEPA documentation and may cause resource damage and are a safety concern.

In Case No. CV08-363-E-EJL, decided on February 21, 2012, Judge Lodge states that "merely listing the generalized benefits of the project and then concluding those actions will make conditions better than they are currently does not provide the kind of analysis required here. To simply state that taking action required of it by statute is better than doing nothing lacks any real consideration of the issues and concerns that arise from the project. It goes without saying that reducing ORV use is beneficial to resources. That conclusion, however, has already been reached by the laws and regulations requiring this action. What is required of the agency is an analysis comprised of something more than restating that conclusion. Particularly as to the impact the abandoned routes will have on the watersheds." (Opinion p. 38)

Page 16 of the opinion sums this argument up well:

The Court finds the Forest Service's analysis and conclusion of no significant impact as to the 94 miles of non-system routes to be arbitrary and capricious. These 94 miles encompass routes created over the years by use outside of the designated system whose impact on the environment has never been analyzed. The Forest Service's position that these are not "new" roads does not absolve it of the need to take a "hard look" at the impact of these roads before making them a part of the designated route system in the area. The Forest Service's reliance on the assumption that the project will eliminate cross country travel and reduce motorized routes does not amount to a proper analysis of the impact of these routes needed to make the finding of no significance and, therefore, is arbitrary and capricious.

The issues here are similar. The Forest Service has never done an analysis of the impacts of gradual motorization that has taken place on trails that were previously only used by foot or stock users. The Forest Service has not analyzed the impacts of gradual motorization of the backcountry both on and off routes/trails. The Forest Service merely admits there have been changes since the 1986 Forest Plan, but the impacts are considered part of the normal situation.

NEPA/NFMA/ESA

The Forest Service Handbook guides managers to “develop other alternatives fully and impartially...[and] ensure that the range of alternatives does not prematurely foreclose options that might protect, restore, and enhance the environment.” Alternatives developed should include themes such as: 1) Maximizing non-motorized and quiet recreational opportunities; However, in the FEIS, the Forest Service has failed to analyze an alternative that keeps all roadless areas non-motorized. The value of roadless areas has been demonstrated scientifically, socially and politically. The 2001 Roadless Rule FEIS prepared by the Forest Service contains a plethora of information about the value of undisturbed roadless areas for wildlife habitat and other values. The agency is well aware of concerns regarding motorized use in roadless areas--the DEIS notes this fact--and the failure to evaluate an alternative that keeps all roadless areas non-motorized fails to meet the requisite “hard look” at “all reasonable alternatives.” The Forest Service has clearly failed to take a hard look at alternatives.

The ROD and FEIS fail NEPA mandates for quality analysis. For example, the Forest Service does not have adequate information on stream crossings. The FEIS admits that a site-specific analysis was not done for every road, trail and road crossing, and stream crossing. There is no baseline data reported for motorized use on the GNF. Motorized stream crossings are also a violation of riparian management objectives.

Manageability

The chosen alternative G will create management difficulties and can cause significant confusion among trail and road users. There is no incentive for someone riding a vehicle to stay on the open trail. In addition, there is a lack of enforcement in remote areas. I recommend only designating trails in those areas where enforcement patrols will be possible and effective and within the budget constraints of the GNF.

“We are dedicated to restore and enhance landscapes, protect and enhance water resources, develop climate change resiliency and help create jobs that will sustain communities.” - Chief of USFS from webpage

"Our National Forests and Grasslands are great natural treasures that we must conserve and restore for the benefit of future generations." - Secretary Vilsack.

The GNF decision of travel management seems to be conflict with what the Secretary and the USFS Chief have stated.

Although Alternative G will better protect resources than present management, it lacks the veracity of a well-constructed sustainable plan to guide travel management into the future.

RELIEF REQUESTED

Appellant Requests that the Regional Forester amend the decision to include:

1. Close road 149 (map index G-22) along Meadow Creek before the first ford of the Creek to the public. Administrative use would be allowed. This closure would protect the riparian zone along Meadow Creek, soil loss lessened; water quality would be increased for this stream that supports wild trout lower in the drainage. This closure would affectively close road 40861 and 89 as they are extensions of the Meadow creek road.
2. Close road 500 (map index G-15) to the public along Turkey Run. Administrative use would be allowed. There are over 50 stream crossings through the stream or tributaries. Turkey Run is a perennial stream that is adversely affected by motorized use through the riparian zone. The road ends near a trailhead into the Wilderness.
3. Close trail 810 to motorized vehicles (map index G-12) down to Whitewater Creek. Administrative use would be allowed. Most users of this trail are non-motorized and vehicle use will increase erosion and likely adversely impact Whitewater Creek and the

- catwalk area. User conflicts are expected to rise if this trail is open to motors.
4. Close road 152 at the junction with road 537 to the public (map index G-23) that goes to McKnight Cabin. Administrative use would be allowed. This road is in very poor shape and likely will not be improved in the future and is a safety hazard. For about 3 miles the road goes along the boundary of the Aldo Leopold Wilderness.
 5. Close all illegal user created roads. See above.

Respectfully,

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